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MM Docket No. 97-91
RM-8854

2. Hettel filed its Petition for Rule Making pursuant to the provisions of Section

1.420(i) of the Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License"), 4 FCC Rcd 4870(1989), recon granted in part, 5 FCC Rcd 7094 (1990). In order to be favorably considered, a proposal must result in a preferential arrangement of allotments in accordance with existing allotment priorities.¹

3. In support of its proposal, Heftel contends that its adoption will result in a preferential arrangement of allotments by providing a first local service to both Lewisville and Robinson, Texas. Heftel notes that Lewisville is an incorporated community of 46,521 persons. Lewisville has a city manager/city counsel form of government and has its own police force, fire department, unified school district, hospital, library and 25 parks and recreational facilities. Lewisville has its own local business community, two local newspapers as well as 80 churches and 140 civic associations. In this regard, Heftel states that Gainesville will continue to receive local service from FM Station KDGE and AM Station KGAF.

4. In regard to Robinson, Texas, Heftel notes that Robinson is an incorporated community with a mayor/city counsel form of government with a population of 7,111 persons according to the 1990 U.S. Census. Robinson has its police department, school district, water and sewage treatment plant and local newspaper. Corsicana will continue to receive local service from full-time AM Station KAND. However, Robinson is partially located within the Waco Urbanized Area and our engineering analysis indicates that the proposed Channel 300A allotment at Robinson will provide a 70 dBu signal to 70% of the Waco Urbanized Area. In this regard, we will not blindly apply the first local service preference when a station seeks to reallocate a channel from a rural community to a suburban community of a nearby urban area. For this reason, we request that Heftel and any other interested party submit information regarding a first local service preference using the Commission criteria set forth in RKO General (KERC), 5 FCC Rcd 3222 (1990) and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988); see also Headland, Alabama, and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995).

5. On January 17, 1997, we released a Report and Order in MM Docket No. 96-10 (DA 96-2210) in which we substituted Channel 299A for Channel 252A at Jacksboro, Texas, and modified the Hunt Broadcasting, Inc. construction permit for Station KAIH, Channel 252A, Jacksboro, to specify operation on Channel 299A. The Channel 299A allotment at Jacksboro conflicts with the proposed Channel 300C1 allotment at Lewisville. To remove this conflict, Heftel proposes the substitution of Channel 237A for Channel 299A at Jacksboro

¹The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) Other public interest matters. [Co-equal weight given to priorities (2) and (3)].

and modification of the Station KAIH construction permit to specify operation on Channel 237A. In turn, a Channel 237A allotment at Jacksboro conflicts with the Channel 240C1 allotment at Mineral Wells, Texas. To remove this conflict, Heftel proposes the substitution of Channel 240C3 for Channel 240C1 at Mineral Wells.

6. In regard to the Mineral Wells allotment, Heftel refers to our Report and Order in MM Docket No. 90-555, 7 FCC Rcd 1791 (1992), in which we modified the license of Station KYXS, Channel 240C3, Mineral Wells, Texas, to specify operation on Channel 240C1. The construction permit to implement this upgrade expired on October 15, 1994, and was cancelled on December 13, 1994. That action is now final. Station KYXS continues to operate on Channel 240C3. We have taken no action regarding our earlier modification of the Station KYXS license to specify operation on Channel 240C1 and our action amending the Table of FM Allotments to reflect a Channel 240C1 allotment at Mineral Wells. To this end, Heftel proposes modification of the Station KYXS license to specify operation on Channel 240C3.²

7. We believe that a first local service to Lewisville, Texas, and a first local service to Robinson, Texas, will both provide significant public interest benefits. Except for an area of 798 square kilometers containing 3,573 persons receiving four aural services, all areas losing service as a result of these proposed reallocations will continue to receive at least five aural services. To accommodate these actions, it is necessary to change the channel of Station KAIH, Jacksboro, Texas, and the channel of Station KYXS, Mineral Wells, Texas. Because these changes are modifications of a license/construction permit within the purview of Section 316 of the Communications Act of 1934, as amended, we are issuing an Order to Show Cause to Hunt Broadcasting, Inc., permittee of Station KAIH, Jacksboro, Texas, to show cause why its construction permit should not be modified to specify operation on Channel 237A, and an Order to Show Cause to Jerry Snyder and Associates, Inc., licensee of Station KYXS, to show cause why its license should not be modified to specify operation on Channel 240C3.

8. Based on the information before us, we are requesting comment on whether the aforementioned Heftel proposal would result in a preferential arrangement of allotments. In accordance with Section 1.420(i) of the Rules, we will not accept competing expressions of interest in the use of Channel 300C1 at Lewisville or Channel 300A at Robinson, or require

² On February 5, 1997, Jerry Snyder and Associates, Inc. ("JSA"), licensee of Station KYXS, filed an "Opposition to Petition for Rule Making." In that opposition, JSA reiterates its ongoing efforts to implement a Class C1 upgrade for Station KYXS. There is no provision in Section 1.420 of the Rules for considering such an opposition before the adoption of a Notice of Proposed Rule Making. In a procedural context, this opposition, along with any response by JSA to the Order to Show Cause, will be considered as timely filed comments in this proceeding.

HefTel to demonstrate the availability of an additional equivalent channel for use by other interested parties.

9. Furthermore, whenever an existing licensee or permittee is ordered to change frequencies in order to accommodate a new channel allotment, Commission policy requires the benefitting party to reimburse the affected station for costs incurred. See Circleville, Ohio, 8 FCC 2d 159 (1967). Since Hunt Broadcasting, Inc. was accorded permittee status prior to the adoption of this Notice, Hunt Broadcasting is entitled to reimbursement for the reasonable and prudent costs associated with the requested frequency change even if the station is unbuilt. See Cordele, Dawson & Montezuma, Georgia, 8 FCC Rcd 7672 (1993). Therefore, petitioner is requested to state its intention to reimburse Hunt Broadcasting for reasonable costs incurred in changing channels.³

10. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Lewisville, Texas	--	300C1
Gainesville, Texas	233C, 300C2	233C
Robinson, Texas	--	300A
Corsicana, Texas	300C1	--
Jacksboro, Texas	229A, 299A	229A, 237A
Mineral Wells, Texas	240C1	240C3

11. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Hunt Broadcasting, Inc., permittee of Station KJKB, Channel 252A, Jacksboro, Texas; and Jerry Snyder and Associates, Inc., licensee of Station KYXS(FM), Channel 240C1, Mineral Wells, Texas, SHALL SHOW CAUSE why their respective authorizations SHOULD NOT BE MODIFIED to specify operation on Channel 237A and 240C3 as proposed herein instead of Channel 252A and Channel 240C1.

12. Pursuant to Section 1.87 of the Commission's Rules, Hunt Broadcasting, Inc., and Jerry Snyder and Associates, Inc., may, not later than May 5, 1997, file a written statement showing with particularity why their authorizations should not be modified as proposed in the Order to Show Cause. The Commission may call on Hunt Broadcasting, Inc. and Jerry Snyder and Associates, Inc. to furnish additional information. If Hunt Broadcasting, Inc. and

³ Petitioner need not pledge a reimbursement intention to the licensee of Station KYXS(FM) at Mineral Wells since the station is already operating at the channel proposed by petitioner.

Jerry Snyder and Associates, Inc. raise a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Hunt Broadcasting, Inc., and Jerry Snyder and Associates, Inc. will be deemed to have consented to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above-mentioned channel modifications are ultimately found to be in the public interest.

13. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this Notice of Proposed Rule Making and Order to Show Cause to the permittee of Station KJKB(FM) and to the licensee of Station KYXS(FM):

Hunt Broadcasting, Inc.
1776 E. Tufts Avenue
Englewood, Colorado 80110
[Permittee of Station KJKB(FM)]

Jerry Snyder and Associates, Inc.
P.O. Box 638
Mineral Wells, Texas 76067
[Licensee of Station KYXS(FM)]

14. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

15. Interested parties may file comments on or before May 5, 1997, and reply comments on or before May 20, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Lee W. Shubert
Richard M Riehl
Haley, Bader & Potts
4350 North Fairfax Drive, Suite 900
Arlington, Virginia 22203-1633
(Counsel for petitioner)

16. The Commission has determined that the relevant provisions of the Regulatory

Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

17. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be

accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW, Washington, DC.